



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/916,611

07/27/2001

Greg Volgas

HCC-011 (306\*142)

8709

23416

7590

05/03/2006

CONNOLLY BOVE LODGE & HUTZ, LLP  
P O BOX 2207  
WILMINGTON, DE 19899

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/916,611	<b>Applicant(s)</b> VOLGAS ET AL.	
	<b>Examiner</b> Alton N. Pryor	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 01 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 1,3-18,20-28,30-39,41-48,50-65,68,69,71,72 and 82-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,3-18,20-28,30-39,41-48,50-56,68,69,71,72 and 82-97 is/are rejected.
- 7) ☐ Claim(s) 57-65 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Applicant's arguments filed 2/1/06 have been fully considered but they are not persuasive. See arguments below.

I. Rejections of claims 1,3-18,20-28,30-39,41-48,50-56,68,69,71,72,82-95 as being obvious over AF 300 from Nufarm MSDS, Infosafe No. NU003 will be maintained for reason on record and reason as follows. New claims 96,97 are added to this rejection.

Applicant argues:

- a) Declaration of Johnnie Roberts executed 2/1/06 provides unexpected results for instant composition comprising 85% of C11 alcohol with 3-moles of ethylene oxide and 15% 2,4-D acid. Roberts' experiment yield complete solubility of 2,4-D acid under conditions wherein the composition was stirred for 30 minutes at ambient temperature. On the other hand, AF-300 discloses a composition containing kerosene and 2,4-D acid wherein after 66 hours of stirring at ambient temperature the 2,4-D acid is not fully dissolved.
- b) Declaration of Johnnie Roberts executed 2/1/06, which establishes that AF 300 herbicide does not fully dissolve said chlorinated carboxylic acid herbicide (2,4-D) in the surfactant as required by the applicant's claim. Roberts' declaration argues that 70 degree C would not be used in herbicide applications.
- c) 2,4-D is not fully solubolized in kerosene; whereas, full solubolization of the herbicide is a primary characteristic of the applicant's invention.

Art Unit: 1616

- d) Applicant provides IUPAC definition of solubility and ASTM definition of a liquid.

Examiner argues:

- a) Instant claims are not commensurate in scope with data provided in Johnny Roberts' declaration of 2/1/06. The claims do not specify a temperature requirement as recited in the example recited in the declaration. Also, claims disclose the broad terms "surfactant" and "chlorinated carboxylic acid herbicide in the acid form," whereas, the example in Roberts' declaration is specific to 85% of C11 alcohol with 3-moles of ethylene oxide as the surfactant and 15% 2,4-D acid as chlorinated carboxylic acid herbicide.
- b) Johnny Roberts declaration signed 7/22/05 discloses that stirring 2,4-D in kerosene at 70 degree C results in 2,4-D being fully solubilized. Note that the claims do not specify a temperature limitation for dissolving 2,4-D in a solvent. Therefore, any temperature at which 2,4-D dissolves in kerosene reads on the claims. Although 70 degree C temperature may not be employed in herbicide applications, the purpose of the 70 degree C temperature employed by the applicant was not to employ the 2,4-D acid in a herbicide application but instead to fully dissolve the 2,4-D acid in kerosene.
- c) 2,4-D is fully solubilized in kerosene. See Examiner's section b).

Art Unit: 1616

- d) Solubility and liquid definitions require experimental results to be acquired at specific temperatures. Note that claims do not recite a required temperature.

Claims 72,82-85 have been added to the rejection above. Applicant admits that claim 72 includes instantly claimed 2,4-D and claims 82-85 would include kerosene since kerosene is included in the broad definition of mineral oil.

II. Objection to claims 57-65 is maintained for reason on record.

### ***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

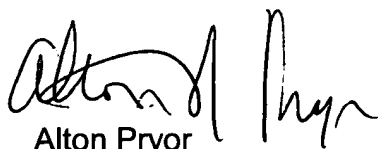
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/916,611

Page 5

Art Unit: 1616

A handwritten signature in black ink, appearing to read 'Alton Pryor', with a stylized, cursive script.

Alton Pryor  
Primary Examiner  
AU 1616